

LEGISLATURE OF NEBRASKA
NINETY-NINTH LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 170

Introduced by Landis, 46

Read first time January 7, 2005

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to decedents' estates; to amend sections
2 30-3803, 30-3805, 30-3810, 30-3822, 30-3836, 30-3837,
3 30-3849, 30-3855, 30-3867, 30-3878, and 30-3879, Revised
4 Statutes Supplement, 2004; to change provisions relating
5 to the Nebraska Uniform Trust Code; to repeal the
6 original sections; and to declare an emergency.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 30-3803, Revised Statutes Supplement,
2 2004, is amended to read:

3 30-3803. (UTC 103) In the Nebraska Uniform Trust Code:

4 (1) "Action", with respect to an act of a trustee,
5 includes a failure to act.

6 (2) "Ascertainable standard" means a standard relating to
7 an individual's health, education, support, or maintenance within
8 the meaning of section 2041(b) (1) (A) or 2514(c) (1) of the Internal
9 Revenue Code of 1986, as defined in section 49-801.01.

10 ~~(2)~~ (3) "Beneficiary" means a person that:

11 (A) has a present or future beneficial interest in a
12 trust, vested or contingent; or

13 (B) in a capacity other than that of trustee, holds a
14 power of appointment over trust property.

15 ~~(3)~~ (4) "Charitable trust" means a trust, or portion of a
16 trust, created for a charitable purpose described in subsection (a)
17 of section 30-3831.

18 ~~(4)~~ (5) "Conservator" means a person appointed by the
19 court to administer the estate of a minor or adult individual.

20 ~~(5)~~ (6) "Environmental law" means a federal, state, or
21 local law, rule, regulation, or ordinance relating to protection of
22 the environment.

23 ~~(6)~~ (7) "Guardian" means a person who has qualified as a
24 guardian of a minor or incapacitated person pursuant to
25 testamentary or court appointment, but excludes one who is merely a
26 guardian ad litem.

27 ~~(7)~~ (8) "Interests of the beneficiaries" means the
28 beneficial interests provided in the terms of the trust.

1 ~~(8)~~ (9) "Jurisdiction", with respect to a geographic
2 area, includes a state or country.

3 ~~(9)~~ (10) "Person" means an individual, corporation,
4 business trust, estate, trust, partnership, limited liability
5 company, association, joint venture, government; governmental
6 subdivision, agency, or instrumentality; public corporation, or any
7 other legal or commercial entity.

8 ~~(10)~~ (11) "Power of withdrawal" means a presently
9 exercisable general power of appointment other than a power: (A)
10 which is exercisable by a trustee and limited by an ascertainable
11 standard; or (B) which is exercisable by another person only upon
12 consent of the trustee or a person holding an adverse interest.

13 ~~(11)~~ (12) "Property" means anything that may be the
14 subject of ownership, whether real or personal, legal or equitable,
15 or any interest therein.

16 ~~(12)~~ (13) "Qualified beneficiary" means a beneficiary
17 who, on the date the beneficiary's qualification is determined:

18 (A) is a distributee or permissible distributee of trust
19 income or principal;

20 (B) would be a distributee or permissible distributee of
21 trust income or principal if the interests of the distributees
22 described in subdivision (A) of this subdivision terminated on that
23 date without causing the trust to terminate; or

24 (C) would be a distributee or permissible distributee of
25 trust income or principal if the trust terminated on that date.

26 ~~(13)~~ (14) "Regulated financial-service institution" means
27 a state-chartered or federally chartered financial institution in
28 which the monetary deposits are insured by the Federal Deposit

1 Insurance Corporation.

2 ~~(14)~~ (15) "Revocable", as applied to a trust, means
3 revocable by the settlor without the consent of the trustee or a
4 person holding an adverse interest.

5 ~~(15)~~ (16) "Settlor" means a person, including a testator,
6 who creates, or contributes property to, a trust. If more than one
7 person creates or contributes property to a trust, each person is a
8 settlor of the portion of the trust property attributable to that
9 person's contribution except to the extent another person has the
10 power to revoke or withdraw that portion.

11 ~~(16)~~ (17) "Spendthrift provision" means a term of a trust
12 which restrains both voluntary and involuntary transfer of a
13 beneficiary's interest.

14 ~~(17)~~ (18) "State" includes any state of the United
15 States, the District of Columbia, the Commonwealth of Puerto Rico,
16 and any territory or possession subject to the legislative
17 authority of the United States.

18 ~~(18)~~ (19) "Terms of a trust" means the manifestation of
19 the settlor's intent regarding a trust's provisions as expressed in
20 the trust instrument or as may be established by other evidence
21 that would be admissible in a judicial proceeding.

22 ~~(19)~~ (20) "Trust instrument" means an instrument executed
23 by the settlor that contains terms of the trust, including any
24 amendments thereto.

25 ~~(20)~~ (21) "Trustee" includes an original, additional, and
26 successor trustee, and a cotrustee.

27 Sec. 2. Section 30-3805, Revised Statutes Supplement,
28 2004, is amended to read:

1 30-3805. (UTC 105) (a) Except as otherwise provided in
2 the terms of the trust, the Nebraska Uniform Trust Code governs the
3 duties and powers of a trustee, relations among trustees, and the
4 rights and interests of a beneficiary.

5 (b) The terms of a trust prevail over any provision of
6 the code except:

7 (1) the requirements for creating a trust;

8 (2) the duty of a trustee to act in good faith and in
9 accordance with the purposes of the trust;

10 (3) the requirement that a trust and its terms be for the
11 benefit of its beneficiaries, and that the trust have a purpose
12 that is lawful, not contrary to public policy, and possible to
13 achieve;

14 (4) the power of the court to modify or terminate a trust
15 under sections 30-3836 to 30-3842;

16 (5) the effect of a spendthrift provision and the rights
17 of certain creditors and assignees to reach a trust as provided in
18 sections 30-3846 to 30-3852;

19 (6) the power of the court under section 30-3858 to
20 require, dispense with, or modify or terminate a bond;

21 (7) the power of the court under subsection (b) of
22 section 30-3864 to adjust a trustee's compensation specified in the
23 terms of the trust;

24 (8) ~~the duty under subdivisions (b)(2) and (3) of section~~
25 ~~30-3878 to notify qualified beneficiaries of an irrevocable trust~~
26 ~~who have attained twenty-five years of age of the existence of the~~
27 ~~trust, of the identity of the trustee, and of their right to~~
28 ~~request trustee's reports;~~

1 ~~(9)~~ the duty under subsection (a) of section 30-3878 to
2 keep the qualified beneficiaries of the trust reasonably informed
3 about the administration of the trust and of the material facts
4 necessary for them to protect their interests, and to respond to
5 the request of a qualified beneficiary of an irrevocable trust for
6 trustee's reports and other information reasonably related to the
7 administration of a trust;

8 ~~(10)~~ (9) the effect of an exculpatory term under section
9 30-3897;

10 ~~(11)~~ (10) the rights under sections 30-3899 to 30-38,107
11 of a person other than a trustee or beneficiary;

12 ~~(12)~~ (11) periods of limitation for commencing a judicial
13 proceeding;

14 ~~(13)~~ (12) the power of the court to take such action and
15 exercise such jurisdiction as may be necessary in the interests of
16 justice;

17 ~~(14)~~ (13) the subject matter jurisdiction of the court
18 and venue for commencing a proceeding as provided in sections
19 30-3814 and 30-3815;

20 ~~(15)~~ (14) the power of a court under subdivision (a)(1)
21 of section 30-3807; and

22 ~~(16)~~ (15) the power of a court to review the action or
23 the proposed action of the trustee for an abuse of discretion.

24 Sec. 3. Section 30-3810, Revised Statutes Supplement,
25 2004, is amended to read:

26 30-3810. (UTC 110) (a) Whenever notice to qualified
27 beneficiaries of a trust is required under the Nebraska Uniform
28 Trust Code, the trustee must also give notice to any other

1 beneficiary who has sent the trustee a request for notice.

2 (b) A charitable organization expressly designated to
3 receive distributions under the terms of a charitable trust ~~or a~~
4 has the rights of a qualified beneficiary under the code if the
5 charitable organization, on the date the charitable organization's
6 qualification is being determined:

7 (A) is a distributee or permissible distributee of trust
8 income or principal;

9 (B) would be a distributee or permissible distributee of
10 trust income or principal upon the termination of the interests of
11 other distributees or permissible distributees then receiving or
12 eligible to receive distributions; or

13 (C) would be a distributee or permissible distributee of
14 trust income or principal if the trust terminated on that date.

15 (c) A person appointed to enforce a trust created for the
16 care of an animal or another noncharitable purpose as provided in
17 section 30-3834 or 30-3835 has the rights of a qualified
18 beneficiary under the code.

19 ~~(e)~~ (d) The Attorney General has the rights of a
20 qualified beneficiary with respect to a charitable trust having its
21 principal place of administration in this state.

22 Sec. 4. Section 30-3822, Revised Statutes Supplement,
23 2004, is amended to read:

24 30-3822. (UTC 301) (a) Notice to a person who may
25 represent and bind another person under sections 30-3822 to 30-3826
26 has the same effect as if notice were given directly to the other
27 person.

28 (b) The consent of a person who may represent and bind

1 another person under sections 30-3822 to 30-3826 is binding on the
2 person represented unless the person represented objects to the
3 representation before the consent would otherwise have become
4 effective.

5 (c) Except as otherwise provided in sections 30-3837 and
6 30-3854, a person who under sections 30-3822 to 30-3826 may
7 represent a settlor who lacks capacity may receive notice and give
8 a binding consent on the settlor's behalf.

9 (d) A settlor may not represent and bind a beneficiary
10 under sections 30-3822 to 30-3826 with respect to the termination
11 or modification of a trust under subsection (a) of section 30-3837.

12 Sec. 5. Section 30-3836, Revised Statutes Supplement,
13 2004, is amended to read:

14 30-3836. (UTC 410) (a) In addition to the methods of
15 termination prescribed by sections 30-3837 to 30-3840, a trust
16 terminates to the extent the trust is revoked or expires pursuant
17 to its terms, no purpose of the trust remains to be achieved, or
18 the purposes of the trust have become unlawful, contrary to public
19 policy, or impossible to achieve.

20 (b) A proceeding to approve or disapprove a proposed
21 modification or termination under sections 30-3837 to 30-3842, or
22 trust combination or division under section 30-3843, may be
23 commenced by a trustee or beneficiary. ~~7 and a proceeding to~~
24 ~~approve or disapprove a proposed modification or termination under~~
25 ~~section 30-3837 may be commenced by the settlor.~~ The settlor of a
26 charitable trust may maintain a proceeding to modify the trust
27 under section 30-3839.

28 Sec. 6. Section 30-3837, Revised Statutes Supplement,

1 2004, is amended to read:

2 30-3837. (UTC 411) (a) ~~A noncharitable irrevocable trust~~
3 ~~may be modified or terminated upon consent of the settlor and all~~
4 ~~beneficiaries, even if the modification or termination is~~
5 ~~inconsistent with a material purpose of the trust. If, upon~~
6 ~~petition, the court finds that the settlor and all beneficiaries~~
7 ~~consent to the modification or termination of a noncharitable~~
8 ~~irrevocable trust, the court shall approve the modification or~~
9 ~~termination even if the modification or termination is inconsistent~~
10 ~~with a material purpose of the trust.~~ A settlor's power to consent
11 to a trust's modification or termination may be exercised by an
12 agent under a power of attorney only to the extent expressly
13 authorized by the power of attorney or the terms of the trust; by
14 the settlor's conservator with the approval of the court
15 supervising the conservatorship if an agent is not so authorized;
16 or by the settlor's guardian with the approval of the court
17 supervising the guardianship if an agent is not so authorized and a
18 conservator has not been appointed.

19 (b) A noncharitable irrevocable trust may be terminated
20 upon consent of all of the beneficiaries if the court concludes
21 that continuance of the trust is not necessary to achieve any
22 material purpose of the trust. A noncharitable irrevocable trust
23 may be modified upon consent of all of the beneficiaries if the
24 court concludes that modification is not inconsistent with a
25 material purpose of the trust.

26 (c) A spendthrift provision in the terms of the trust is
27 presumed to constitute a material purpose of the trust.

28 (d) Upon termination of a trust under subsection (a) or

1 (b) of this section, the trustee shall distribute the trust
2 property as agreed by the beneficiaries.

3 (e) If not all of the beneficiaries consent to a proposed
4 modification or termination of the trust under subsection (a) or
5 (b) of this section, the modification or termination may be
6 approved by the court if the court is satisfied that:

7 (1) if all of the beneficiaries had consented, the trust
8 could have been modified or terminated under this section; and

9 (2) the interests of a beneficiary who does not consent
10 will be adequately protected.

11 Sec. 7. Section 30-3849, Revised Statutes Supplement,
12 2004, is amended to read:

13 30-3849. (UTC 504) (a) In this section, "child" includes
14 any person for whom an order or judgment for child support has been
15 entered in this or another state.

16 (b) Except as otherwise provided in subsection (c) of
17 this section, whether or not a trust contains a spendthrift
18 provision, a creditor of a beneficiary may not compel a
19 distribution that is subject to the trustee's discretion, even if:

20 (1) the discretion is expressed in the form of a standard
21 of distribution; or

22 (2) the trustee has abused the discretion.

23 (c) To the extent a trustee has not complied with a
24 standard of distribution or has abused a discretion:

25 (1) a distribution may be ordered by the court to satisfy
26 a judgment or court order against the beneficiary for support or
27 maintenance of the beneficiary's child, spouse, or former spouse;
28 and

1 (2) the court shall direct the trustee to pay to the
2 child, spouse, or former spouse such amount as is equitable under
3 the circumstances but not more than the amount the trustee would
4 have been required to distribute to or for the benefit of the
5 beneficiary had the trustee complied with the standard or not
6 abused the discretion.

7 (d) This section does not limit the right of a
8 beneficiary to maintain a judicial proceeding against a trustee for
9 an abuse of discretion or failure to comply with a standard for
10 distribution.

11 (e) A creditor may not reach the interest of a
12 beneficiary who is also a trustee or cotrustee, or otherwise compel
13 a distribution, if the trustee's discretion to make distributions
14 for the trustee's own benefit is limited by an ascertainable
15 standard.

16 Sec. 8. Section 30-3855, Revised Statutes Supplement,
17 2004, is amended to read:

18 30-3855. (UTC 603) (a) While a trust is revocable, ~~and~~
19 ~~the settlor has capacity to revoke the trust,~~ rights of the
20 beneficiaries are subject to the control of, and the duties of the
21 trustee are owed exclusively to, the settlor. ~~A settlor's power to~~
22 ~~revoke the trust is not terminated by the settlor's incapacity. If~~
23 ~~the power to revoke the trust may instead be exercised by an agent~~
24 ~~under a power of attorney as authorized under subsection (e) of~~
25 ~~section 30-3854 or by a conservator or guardian as authorized under~~
26 ~~subsection (f) of section 30-3854 or if such agent, conservator, or~~
27 ~~guardian holds a power of withdrawal on behalf of the settlor, then~~
28 ~~the duties of the trustee remain owed exclusively to the settlor.~~

1 (b) During the period the power may be exercised, the
2 holder of a power of withdrawal has the rights of a settlor of a
3 revocable trust under this section to the extent of the property
4 subject to the power.

5 Sec. 9. Section 30-3867, Revised Statutes Supplement,
6 2004, is amended to read:

7 30-3867. (UTC 802) (a) A trustee shall administer the
8 trust solely in the interests of the beneficiaries.

9 (b) Subject to the rights of persons dealing with or
10 assisting the trustee as provided in section 30-38,101, a sale,
11 encumbrance, or other transaction involving the investment or
12 management of trust property entered into by the trustee for the
13 trustee's own personal account or which is otherwise affected by a
14 conflict between the trustee's fiduciary and personal interests is
15 voidable by a beneficiary affected by the transaction unless:

16 (1) the transaction was authorized by the terms of the
17 trust;

18 (2) the transaction was approved by the court;

19 (3) the beneficiary did not commence a judicial
20 proceeding within the time allowed by section 30-3894;

21 (4) the beneficiary consented to the trustee's conduct,
22 ratified the transaction, or released the trustee in compliance
23 with section 30-3898; or

24 (5) the transaction involves a contract entered into or
25 claim acquired by the trustee before the person became or
26 contemplated becoming trustee.

27 (c) A sale, encumbrance, or other transaction involving
28 the investment or management of trust property is presumed to be

1 affected by a conflict between personal and fiduciary interests if
2 it is entered into by the trustee with:

3 (1) the trustee's spouse;

4 (2) the trustee's descendants, siblings, parents, or
5 their spouses;

6 (3) an agent or attorney of the trustee; or

7 (4) a corporation or other person or enterprise in which
8 the trustee, or a person that owns a significant interest in the
9 trustee, has an interest that might affect the trustee's best
10 judgment.

11 (d) A transaction not concerning trust property in which
12 the trustee engages in the trustee's individual capacity involves a
13 conflict between personal and fiduciary interests if the
14 transaction concerns an opportunity properly belonging to the
15 trust.

16 (e) An investment by a trustee in securities of an
17 investment company or investment trust to which the trustee, or its
18 affiliate, provides services in a capacity other than as trustee is
19 not presumed to be affected by a conflict between personal and
20 fiduciary interests if the investment otherwise complies with the
21 prudent investor rule set forth in sections 30-3883 to 30-3889. In
22 addition to its compensation for acting as trustee, the trustee may
23 be compensated by the investment company or investment trust for
24 providing those services out of fees charged to the trust. If the
25 trustee receives compensation from the investment company or
26 investment trust for providing investment advisory or investment
27 management services, the trustee shall at least annually notify the
28 persons entitled under section 30-3878 to receive a copy of the

1 trustee's annual report of the rate and method by which that
2 compensation was determined.

3 (f) In voting shares of stock or in exercising powers of
4 control over similar interests in other forms of enterprise, the
5 trustee shall act in the best interests of the beneficiaries. If
6 the trust is the sole owner of a corporation or other form of
7 enterprise, the trustee shall elect or appoint directors or other
8 managers who will manage the corporation or enterprise in the best
9 interests of the beneficiaries.

10 (g) This section does not preclude the following
11 transactions, if fair to the beneficiaries:

12 (1) an agreement between a trustee and a beneficiary
13 relating to the appointment or compensation of the trustee;

14 (2) payment of reasonable compensation to the trustee;

15 (3) a transaction between a trust and another trust,
16 decedent's estate, or conservatorship of which the trustee is a
17 fiduciary or in which a beneficiary has an interest;

18 (4) a deposit of trust money in a regulated
19 financial-service institution operated by the trustee; or

20 (5) an advance by the trustee of money for the protection
21 of the trust.

22 (h) The court may appoint a special fiduciary to make a
23 decision with respect to any proposed transaction that might
24 violate this section if entered into by the trustee.

25 Sec. 10. Section 30-3878, Revised Statutes Supplement,
26 2004, is amended to read:

27 30-3878. (UTC 813) (a) A trustee shall keep the
28 qualified beneficiaries of the trust reasonably informed about the

1 administration of the trust and of the material facts necessary for
2 them to protect their interests. Unless unreasonable under the
3 circumstances, a trustee shall promptly respond to a beneficiary's
4 request for information related to the administration of the trust.

5 (b) A trustee:

6 (1) upon request of a beneficiary, shall promptly furnish
7 to the beneficiary a copy of the trust instrument;

8 (2) within sixty days after accepting a trusteeship,
9 shall notify the qualified beneficiaries of the acceptance and of
10 the trustee's name, address, and telephone number;

11 (3) within sixty days after the date the trustee acquires
12 knowledge of the creation of an irrevocable trust, or the date the
13 trustee acquires knowledge that a formerly revocable trust has
14 become irrevocable, whether by the death of the settlor or
15 otherwise, shall notify the qualified beneficiaries of the trust's
16 existence, of the identity of the settlor or settlors, of the right
17 to request a copy of the trust instrument, and of the right to a
18 trustee's report as provided in subsection (c) of this section; and

19 (4) shall notify the qualified beneficiaries in advance
20 of any change in the method or rate of the trustee's compensation.

21 (c) A trustee shall send to the distributees or
22 permissible distributees of trust income or principal, and to other
23 qualified or nonqualified beneficiaries who request it, at least
24 annually and at the termination of the trust, a report of the trust
25 property, liabilities, receipts, and disbursements, including the
26 source and amount of the trustee's compensation, a listing of the
27 trust assets and, if feasible, their respective market values.
28 Upon a vacancy in a trusteeship, unless a cotrustee remains in

1 office, a report must be sent to the qualified beneficiaries by the
2 former trustee. A personal representative, conservator, or
3 guardian may send the qualified beneficiaries a report on behalf of
4 a deceased or incapacitated trustee.

5 (d) A beneficiary may waive the right to a trustee's
6 report or other information otherwise required to be furnished
7 under this section. A beneficiary, with respect to future reports
8 and other information, may withdraw a waiver previously given.

9 (e) The duties of a trustee specified in this section are
10 subject to the provisions of section 30-3855.

11 (f) ~~The requirements of subdivisions~~ Subdivisions (b) (2)
12 and (3) of this section ~~apply only to trustees who accept a~~
13 ~~trusteeship on or after January 1, 2005, and to trusts which become~~
14 ~~irrevocable on or after January 1, 2005~~ do not apply to a trustee
15 who accepts a trusteeship before January 1, 2006, to an irrevocable
16 trust created before January 1, 2006, or to a revocable trust that
17 becomes irrevocable before January 1, 2006.

18 Sec. 11. Section 30-3879, Revised Statutes Supplement,
19 2004, is amended to read:

20 30-3879. (UTC 814) (a) Notwithstanding the breadth of
21 discretion granted to a trustee in the terms of the trust,
22 including the use of such terms as "absolute", "sole", or
23 "uncontrolled", the trustee shall exercise a discretionary power in
24 good faith and in accordance with the terms and purposes of the
25 trust and the interests of the beneficiaries.

26 (b) Subject to subsection (d) of this section, and unless
27 the terms of the trust expressly indicate that a rule in this
28 subsection does not apply:

1 (1) a person other than a settlor who is a beneficiary
2 and trustee of a trust that confers on the trustee a power to make
3 discretionary distributions to or for the trustee's personal
4 benefit may exercise the power only in accordance with an
5 ascertainable standard; ~~and relating to the trustee's individual~~
6 ~~health, education, support, or maintenance within the meaning of~~
7 ~~section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code as~~
8 ~~defined in section 49-801.01, and~~

9 (2) a trustee may not exercise a power to make
10 discretionary distributions to satisfy a legal obligation of
11 support that the trustee personally owes another person.

12 (c) A power whose exercise is limited or prohibited by
13 subsection (b) of this section may be exercised by a majority of
14 the remaining trustees whose exercise of the power is not so
15 limited or prohibited. If the power of all trustees is so limited
16 or prohibited, the court may appoint a special fiduciary with
17 authority to exercise the power.

18 (d) Subsection (b) of this section does not apply to:

19 (1) a power held by the settlor's spouse who is the
20 trustee of a trust for which a marital deduction, as defined in
21 section 2056(b)(5) or 2523(e) of the Internal Revenue Code as
22 defined in section 49-801.01, was previously allowed;

23 (2) any trust during any period that the trust may be
24 revoked or amended by its settlor; or

25 (3) a trust if contributions to the trust qualify for the
26 annual exclusion under section 2503(c) of the Internal Revenue Code
27 as defined in section 49-801.01.

28 Sec. 12. Original sections 30-3803, 30-3805, 30-3810,

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1 30-3822, 30-3836, 30-3837, 30-3849, 30-3855, 30-3867, 30-3878, and
2 30-3879, Revised Statutes Supplement, 2004, are repealed.

3 Sec. 13. Since an emergency exists, this act takes
4 effect when passed and approved according to law.